

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections)
12 and 19 of the Cable)

Television Consumer Protection)
Act of 1992)

Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

MM Docket No 92-265

OPPOSITION OF UNITED VIDEO, INC.

Jeff Treeman
President
UNITED VIDEO, INC.
3801 S. Sheridan Road
Tulsa, OK 74145
918/665-6690

July 14, 1993

No. of Copies rec'd
List A B C D E

24/0

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED
JUL 14 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Sections)
12 and 19 of the Cable)
Television Consumer Protection) MM Docket No. 92-265
Act of 1992)
)
Development of Competition and)
Diversity in Video Programming)
Distribution and Carriage)

To: The Commission

OPPOSITION OF UNITED VIDEO, INC.

United Video, Inc., pursuant to Section 1.429 of the Commission's Rules, submits the following comments in opposition to the National Rural Telecommunications Cooperative's ("NRTC") Petition for Reconsideration of the Commission's First Report and Order in the above-captioned proceeding.^{1/} The NRTC's request that the regulations be revised to permit the assessment of damages for violations of the program access requirements and the NRTC's charges that the Commission has prejudged the issue of justifiable price differentials are without merit.

In addition, United Video supports the Petitioners in this proceeding who have argued for more specific standards for

^{1/} Under the 1992 Cable Act and the Commission's rules, United Video, Inc. is a "satellite broadcast programming vendor" by virtue of its satellite services distributing superstations WGN-TV, WOR-TV, WPIX-TV and KTVT-TV to facilities based operators, primarily cable television systems.

the filing of complaints and for buying groups. Two minor modifications to the complaint and enforcement procedures outlined in the Report & Order will further the Commission's goal of a streamlined complaint process, in which program access and price discrimination allegations can be resolved expeditiously. The Commission should require detailed, factual information in complaints filed pursuant to Section 628. In addition, buying groups should be regulated or otherwise subject to review to the extent necessary to demonstrate compliance with the Commission's rules.

**I. ASSESSMENT OF DAMAGES FOR VIOLATIONS
OF SECTION 628 IS INAPPROPRIATE**

As United Video has stated previously, the Commission's authority to establish non-discriminatory prices for programming pursuant to Section 628(e)(1) is a sufficient remedy in price discrimination cases. See Comments of United Video, Inc. at 40. Contrary to the assertions of NRTC, (NRTC Petition for Reconsideration, at 4-10), programming distributors do not need the additional "incentive" of a determination of liability for monetary damages and counsel fees in order to comply with the program access and price discrimination regulations. United Video is concerned that the low threshold for filing price discrimination complaints, together with the ability to receive monetary damages and counsel fees, will encourage further multichannel video programming distributors ("MVPD's") to file

complaints they might not otherwise file. The Commission nor the satellite programming vendors should not be burdened with unjustified complaints filed solely for the purposes of gaining a settlement or to enhance the complainant's position in contract negotiations. Therefore, the Commission should reject NRTC's request.

**II. NRTC'S CLAIMS THAT THE COMMISSION
HAS "PRE-JUDGED" THE LEGITIMACY OF
PRICE DIFFERENTIALS IS UNFOUNDED**

The Report & Order correctly acknowledges that there are legitimate reasons for differences in the pricing of programming made available to MVPD's. Report & Order, at ¶¶105-111. Rather than refute the Commission's findings, NRTC wrongly accuses the Commission of being prejudicial. United Video supports the Commission's conclusion that in the pricing of video programming there are justifiable price differences among MVPD's. Moreover, the Commission's finding is entirely consistent with congressional intent; the 1992 Cable Act recognizes that some price differentials are in order. Thus, the NRTC's attempt to impugn the integrity of the Commission's Report & Order should be rejected.

In its petition NRTC repeats once again its unsupported conclusions regarding price differentials and refuses to recognize that Section 628 of the 1992 Cable Act specifically establishes various criteria under which price differentials may be

justified, including differences based on cost. NRTC emphasizes that it has been arguing these same issues in various proceedings for a number of years. However, NRTC has never been able to demonstrate that the price differentials for superstation signals were not fully justified.

NRTC apparently objects to any effort by the Commission to interpret the statute in the context of the real world. For example, NRTC asserts that the "artificial ceiling" on program pricing by satellite carriers distributing superstations "is statutorily irrelevant". In its Report & Order the Commission correctly concluded that:

"[C]ertain practices involving price differentials benefit the public by increasing the availability of programming -- as well as reducing the price of

The fact is that Congress assigned to the Commission the difficult task of applying the statute to the realities of the satellite distribution business and the Commission has properly recog-

1. The Commission should outline in the regulations the type of detailed information which must be specified in the original notice that MVPD's must give programming vendors.

The Report & Order requires aggrieved MVPD's to "first inform the programming vendor of its belief that discriminatory behavior has occurred. Such notice must be sufficiently detailed so that the vendor can determine the specific nature of the potential complaint". Report & Order, at ¶124. Although this requirement is a good step in the right direction, it can be improved. United Video's concern is that the regulation will permit MVPD's to trigger the complaint process with unsubstantiated general allegations. Accordingly, the Commission should specify the detailed information MVPD's should include in their notice to programming vendors. United Video suggests such information should, at a minimum, demonstrate that the effect of the program vendor's actions is to significantly hinder program distribution. Evidence supporting this allegation could include proof that the complaining MVPD has actively marketed services within a specified geographic area and that the service offered by the MVPD is comparable.

2. The MVPD's detailed allegations of discriminatory conduct should be submitted to the Commission as part of the initial complaint.

The Report & Order requires complaining MVPD's to submit to the Commission evidence that the MVPD has given the

offending programming vendor notice of a potential complaint. Report & Order, at ¶124. However, the Report & Order requires only that the MVPD file an affidavit from an officer of the company or, in the alternative, submit a copy of a certified letter sent to the programming vendor, as evidence that notice has been given. There is no requirement that the affidavit or the certified letter include the same sufficiently detailed explanation of the programming vendor's allegedly discriminatory conduct. To ensure that the Commission staff has enough information upon which to base a decision, detailed information about the programming vendor's allegedly discriminatory conduct should be made available in the initial complaint. Since the complainant would be required to provide programming vendors with sufficient detail of discriminatory conduct, there is no added burden on the MVPD to provide this information to the Commission.

IV. BUYING GROUPS MUST BE SCRUTINIZED

It is critical for the Commission to re-evaluate its treatment of buying groups and to set strict standards for such groups in order to prevent the formation of sham buying groups that will undermine the entire rate structures of satellite programming vendors. United Video supports those petitioners in this proceeding who have asserted that buying groups must be able to demonstrate at the time service is requested that they are capable of satisfying the group's financial obligations by

permitting the satellite programming vendors to require the group members to guarantee payment or to agree to joint and several liability. At a minimum, the Commission should require that buying groups document to the satellite programming vendors at the time service is requested that they comply with all of the standards set forth in 76.1000(c) of the Commission's rules. Otherwise, satellite programming vendors will be beset with pseudo "buying groups" and promoters attempting to form buying groups for their own personal economic benefit.

Conclusion

For the foregoing reasons United Video respectfully requests that the Commission deny the Petition for Reconsideration filed by the NRTC in this proceeding and grant the relief requested herein.

Respectfully submitted,

By Jeff Treeman
Jeff Treeman
President
UNITED VIDEO, INC.
3801 S. Sheridan Road
Tulsa, OK 74145
918/665-6690

July 14, 1993

CERTIFICATE OF SERVICE

I, Nancy Thompson Melandry, hereby certify that I have mailed, postage prepaid, this 14th day of July, 1993 a copy of the foregoing Opposition of United Video, Inc. to the following:

Robert L. Hoegle
Counsel for Liberty Media Corporation
Carter, Ledyard & Milburn
1350 I Street, N.W.
Suite 870
Washington, D.C. 20005

John B. Richards
Counsel for National Rural Telecommunications
Cooperative
Keller and Heckman

Paul J. Sinderbrand
Counsel for Wireless Cable Association
International, Inc.
Sinderbrand & Alexander
888 Sixteenth Street, N.W.
Suite 610
Washington, D.C. 20006

David M. Silverman
Counsel for Black Entertainment Television
[REDACTED]